

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2009-0398
	)	DEPARTMENT A
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
RONY MATUL SARAT-ROJOP,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20084597

Honorable Deborah Bernini, Judge

AFFIRMED IN PART, REMANDED IN PART FOR CLARIFICATION

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B R A M M E R, Presiding Judge.

¶1 After a jury trial, appellant Rony Sarat-Rojop was convicted of seven felonies involving the same victim: three counts of sexual assault; one count each of kidnapping and aggravated assault, both dangerous-nature offenses; and one count each of sexual abuse and robbery. At sentencing, the trial court imposed presumptive sentences on all counts and ordered the 10.5-year prison sentence for count one and seven-year prison sentence for count two—the kidnapping and one of the sexual assaults—to be served concurrently. The court ordered the prison terms for the remaining counts to be served consecutively to count two and to each other.

¶2 As the sole issue raised on appeal, Sarat-Rojop argues the court’s sentencing minute entry is in error because it provides his sentences for counts three through six to be served consecutively to both counts one and two, rather than to count two alone, a difference of 3.5 years in his aggregate sentence. He asks that we remand the case and direct the court to issue a corrected minute entry reflecting that his sentence for count three is to be served consecutively to his seven-year sentence for count two, but not his 10.5-year sentence for count one.

¶3 In response, the state concedes a discrepancy exists between the sentencing transcript and the sentencing minute entry but urges us to remand the case to the trial court for clarification of the court’s intent at sentencing. As the state points out, the court did not specify that Sarat-Rojop’s seven-year sentence for count three was to be “partially concurrent” with his 10.5-year sentence for count one, as he suggests. Moreover, as

Sarat-Rojop acknowledges, A.R.S. § 13-711(A) provides sentences shall be served consecutively unless the court “expressly directs otherwise.”<sup>1</sup>

¶4 At issue here is the following statement made by the trial court after pronouncing sentence for each individual count:

[T]he Court will order as follows regarding consecutive and concurrent [sentences]:

Count One shall run concurrently with the sentence being ordered in Count Two, because I’m required to under Arizona law.

However, Count Three is stacked on Count Two. Count Four is stacked on Count Three. Count Five is stacked on Count Four. Count Six is stacked on Count Five. Count Seven is stacked on Count Six.

¶5 “Upon finding a discrepancy between the oral pronouncement of sentence and a minute entry, a reviewing court must try to ascertain the trial court’s intent by reference to the record.” *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992). And, where such reference resolves the apparent discrepancy, “the oral pronouncement of sentence controls” over the written judgment. *State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983). Where a discrepancy “cannot be resolved by reference to the record,” however, “a remand for clarification of sentence is appropriate.” *State v. Bowles*, 173 Ariz. 214, 216, 841 P.2d 209, 211 (App. 1992) (emphasis omitted). Here, we agree with the state that the trial court may have “conflated

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<sup>1</sup>The Arizona criminal sentencing code has been renumbered, effective “from and after December 31, 2008.” *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. For ease of reference and because no changes in the statutes are material to the issues in this case, *see id.* § 119; 2007 Ariz. Sess. Laws, ch. 20, § 1, we refer in this decision to the current section numbers rather than those in effect when Sarat-Rojop committed these offenses.

Counts 1 and 2—which are concurrent with each other—in stating ‘Count Three is stacked on Count Two.’” Absent evidence of the court’s intent to impose a partially concurrent sentence, and finding the record ambiguous, we must remand the case for clarification of the concurrent and consecutive natures of the sentences imposed.

¶6 For the foregoing reasons, we affirm Sarat-Rojop’s convictions and remand the case for clarification of his sentences, consistent with this decision.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge